IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE P.N.RAVINDRAN

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

RCRev..No. 368 of 2007()

RCA.19/2006 of RENT CONTROL APPELLATE AUTHORITY &
DISTRICT COURT, ALAPPUZHA
RCP.72/2004 of RENT CONTROLLER, ALAPPUZHA
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REVISION PETITIONER/RESPONDENT/COUNTER PETITIONER

THRESYAMMA DEVASYA,
W/O.DEVASYA, VELIMPARAMBIL,
KANJIRAMCHIRA MURI, ARYAD SOUTH VILLAGE.

BY ADV. SRI.V.K.PRAVEEN

RESPONDENTS: APPELLANTS/PETITIONERS
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1. NALINI, D/O.LATE MADHAVI KARTHIYAYANI,
VELIYIL HOUSE, KANJIRAMCHIRA MURI,
ARYAD SOUTH VILLAGE.

2. LEELA, D/O.LATE MADHAVI KARTHIYAYANI,
VELIYIL HOUSE, KANJIRAMCHIRA MURI,
ARYAD SOUTH VILLAGE.

3. THANKAPPAN, S/O.LATE
MADHAVI KARTHIYAYANI, VELIYIL HOUSE,
KANJIRAMCHIRA MURI, ARYAD SOUTH VILLAGE.

4. REMANI, D/O.LATE MADHAVI KARTHIYAYANI,
VELIYIL HOUSE, KANJIRAMCHIRA MURI,
ARYAD SOUTH VILLAGE.

5. REMADEVI, D/O.LATE MADHAVI KARTHIYAYANI
VELIYIL HOUSE, KANJIRAMCHIRA MURI,
ARYAD SOUTH VILLAGE.

BY

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 19/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.No.3194/07 IN R.C.R.368/07

//DISMISSED//

19.12.2007 SD/= (K.BALAKRISHNAN NAIR, JUDGE)

SD/= (P.N.RAVINDRAN, JUDGE)

K.BALAKRISHNAN NAIR AND P.N.RAVINDRAN, JJ.

R.C.R.No.368 OF 2007

DATED THIS THE 19th DAY OF DECEMBER, 2007

O R D E R

Balakrishnan Nair, J.

Tenant is the revision petitioner. Landlords are the respondents.

2. The landlords filed the R.C.P. under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as 'the Act'). The Rent Controller dismissed the application. In appeal filed by the landlords, the decision of the Rent Controller was reversed. Hence this revision.

3. The petition schedule building in the occupation of the tenant was sought for the use of the first respondent's son Mr.Kishore to run a hotel. He is unemployed and he has no other business. He is mainly dependent on the landlords for his needs. So eviction was sought under section 11(3). The tenant resisted the eviction contending that the claim is not a bona fide one and it is only a ruse to evict her.

4. From the side of the landlords, PWs 1 and 2 were examined. From the side of the tenants, CPWs 1 to 3 were examined and Exhibits B1 to B9(a) were marked. The Rent Controller dismissed the application holding that there is no bona fide need and also finding that the tenant is entitled to get the protection of the 1st and 2nd

provisos to section 11(3). The appellate authority reversed all the above said findings of the Rent Controller and allowed the appeal filed by the landlords.

5. Learned counsel for the revision petitioner mainly argued before us for the protection of the 1st and 2nd provisos to section 11(3). According to the learned counsel, it has come out in evidence that a portion of the large building owned by the landlords is remaining vacant which could be used by PW2 to start a hotel. As per the evidence on record, there are altogether four rooms in the building. One of the rooms is occupied by the tenant. In the other three rooms, there are vegetable shop, stationery shop and soda factory respectively. The Advocate-Commissioner reported that a portion of the room housing the stationery shop is remaining vacant. The vacant portion is separated by placing almirahs. But the Appellate Authority noticed that a portion of that room is already occupied by the stationery shop. Further, there is no dividing wall between the open space and the space occupied by the stationery shop. Therefore, the Appellate Authority held that a portion of the room remaining vacant cannot be used for running the hotel. So, it was held that there is no room available with the landlords for the use of PW2. We are of the view that it is a plausible view on the facts and the same cannot be described as perverse, warranting interference under section 20 of the Act.

6. Secondly, the learned counsel for the petitioner attacked the finding of the Appellate Authority under the second limb of the second proviso. According to the learned counsel there are no suitable rooms available in the locality. The appellate authority noticed that the tenant while in the box did not specifically deny the suggestion of the landlords that there are vacant rooms available in the buildings owned by Mr.Sivadas and Mr.Raja. The tenant answered that she is not aware of that and she has not made any enquiries. The appellate authority held that the burden is heavily on the tenant to prove that there are no suitable vacant rooms available in the locality. Having regard to the response of the tenant to the aforementioned suggestion, the Appellate Authority held that she has failed to discharge her burden. Learned counsel for the petitioner would point out that the landlords should have put a further question to the tenant that whether the rooms available are suitable; otherwise it cannot said that the tenant has failed to discharge her burden. In support of this submission, the learned counsel for the tenant relied on a Division Bench decision of this court in **Krishnankunju Raveendran v.Sukumara Pillai (1999 (3) KLT 373).**

7. The Rent Controller in this case put the burden on the landlords to show that there are suitable vacant rooms available in the

locality for the tenant to occupy. The Appellate Authority rightly reversed the said decision of the court below. It is settled by several decisions of this court that the burden to prove the ingredients of the second proviso is heavily on the tenant. In this case the tenant feigns ignorance when suggestion is made by the landlords that there are vacant rooms available in the locality. We are of the view that the finding of the appellate authority that the tenant has failed to discharge her burden under the second limb of the second proviso is perfectly legal and valid. We agree with the reasons and conclusions of the appellate authority in this regard. The decision cited by the petitioner has no application to the facts of this case.

8. The learned counsel also pointed out that RW3, the Advocate-Commissioner, in a connected suit has stated that there are no rooms available in the locality. We notice that it is only a blank statement without any reference to any of the buildings or giving the details regarding the inspections made by him. So, the said statement will not bail out the tenant from discharging her burden under the second limb of the second proviso.

9. No other point was urged.

10. Having regard to the facts of the case, the petitioner is granted six months from today to vacate the tenanted premises on condition that she files an unconditional undertaking in the form of an

affidavit before the execution court within one month from today, undertaking to vacate the premises within six months from today. The arrears of rent, if any, remaining unpaid shall be deposited within one month from today. She shall also pay the rent due from time to time till the room is vacated.

In the result, the rent control revision fails and it is dismissed, subject to the above direction.

K.BALAKRISHNAN NAIR, JUDGE.

P.N.RAVINDRAN, JUDGE.

dsn